

Agenda Item #: 5.D.1.

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

## AGENDA ITEM SUMMARY

[illegible]

**Submitted By:** Purchasing Department

**Submitted For: Purchasing Department**

## I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve on preliminary reading and advertise for public hearing on August 18, 2009 at 9:30 a.m.: an Ordinance of the Board of County Commissioners of Palm Beach County, Florida, amending Sections 2-80.41 through 2-80.48 of the Palm Beach County Code, which codified Ordinance 02-065 establishing a “Local Preference in Purchasing Ordinance”; providing for a title; providing for definitions; providing for a reciprocal preference for local businesses; providing for a straight preference for local businesses; providing for a straight preference for Glades businesses; providing for a straight preference for the use of Glades subcontractors by local businesses; providing for limitations; providing for repeal of laws in conflict; providing for severability; providing for inclusion in the Code of Laws and Ordinances; and, providing for an effective date.

**Summary:** The current Local Preference Ordinance (Ordinance No. 2002-065), which was adopted in 2002, established a 5% straight local preference for local businesses. It also established a 5% reciprocal preference for local businesses competing against vendors from Martin, Broward and Miami-Dade Counties that is applied when a local preference ordinance or policy established by one of those Counties is utilized against Palm Beach County vendors. In addition to the 5% straight local preference and the 5% reciprocal preference for local businesses, the proposed Ordinance Amendment establishes a 5% straight local preference for Glades businesses competing against local or non-local vendors for goods or services to be utilized in the Glades and for any construction projects located in the Glades. The proposed Ordinance Amendment also establishes a straight 3% or 4% preference for local businesses using Glades subcontractors for goods or services to be utilized in the Glades or for any construction projects located in the Glades. Countywide (DW)

**Background and Policy Issues:** In 2002, the Local Preference Ordinance was adopted and established a 5% straight local preference for local businesses and a 5% reciprocal preference for local businesses competing against vendors from Martin, Broward and Miami-Dade Counties (that is applied when a local preference ordinance or policy established by one of those Counties is utilized against Palm Beach County vendors). In addition to the 5% straight local

**(Continued on Page 3)**

**Attachments:** Proposed Ordinance Amendment: Strike-through / underlined version

Recommended by: Kathy Barrett 7/14/09  
Department Director Date

Approved by: [Signature] 7/20/09  
Assistant County Administrator Date

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>* SEE BELOW</u>				
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes ☐ No ☐  
Budget Account No.: Fund ☐ Dept ☐ Unit ☐ Object ☐

### B. Recommended Sources of Funds/Summary of Fiscal Impact:

\* No Fiscal Impact.

### C. Departmental Fiscal Review:

## III. REVIEW COMMENTS

### A. OFMB Budget and/or Contract Dev. and Control Comments:

7/15/09 MC 7/16/09  
OFMB/Budget  
7/16/09 mm 7-15-09

7/16/09  
Contract Development and Control

### B. Legal Sufficiency:

7/20/09  
Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
Department Director

This summary is not to be used as a basis for payment.

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preference and the 5% reciprocal preference for local businesses, this proposed Ordinance Amendment establishes a 5% straight local preference for Glades businesses competing against local or non-local vendors for goods or services to be utilized in the Glades and for any construction projects located in the Glades, and a straight 3% or 4% preference for local businesses using Glades subcontractors for goods or services to be utilized in the Glades or for any construction projects located in the Glades. This Ordinance Amendment recognizes the unique and challenging economic condition of the Glades and provides the opportunity for local dollars to be used to stimulate the local provision of goods and services. This will bring economic opportunities to the Glades through the reinvestment of local taxpayer dollars back into this area.

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preference and the 5% reciprocal preference for local businesses, this proposed Ordinance Amendment establishes a 5% straight local preference for Glades businesses competing against local or non-local vendors for goods or services to be utilized in the Glades and for any construction projects located in the Glades, and a straight 3% or 4% preference for local businesses using Glades subcontractors for goods or services to be utilized in the Glades or for any construction projects located in the Glades. This Ordinance Amendment recognizes the unique and challenging economic condition of the Glades and provides the opportunity for local dollars to be used to stimulate the local provision of goods and services. This will bring economic opportunities to the Glades through the reinvestment of local taxpayer dollars back into this area.

ORDINANCE NO. 20 \_\_\_\_ - \_\_\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA. AMENDING SECTIONS 2-80.41 THROUGH 2-80.48 OF THE PALM BEACH COUNTY CODE, WHICH CODIFIED ORDINANCE 02-065 ESTABLISHING A "LOCAL PREFERENCE IN PURCHASING ORDINANCE"; PROVIDING FOR A TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR A RECIPROCAL PREFERENCE FOR LOCAL BUSINESSES; PROVIDING FOR A STRAIGHT PREFERENCE FOR LOCAL BUSINESSES; PROVIDING FOR A STRAIGHT PREFERENCE FOR GLADES BUSINESSES; PROVIDING FOR A STRAIGHT PREFERENCE FOR THE USE OF GLADES SUBCONTRACTORS BY LOCAL BUSINESSES; PROVIDING FOR LIMITATIONS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Board of County Commissioners of Palm Beach County, Florida enacted Ordinance No. 02-065 which established a local preference for the procurement of goods, services, and the construction of public works projects; and

**WHEREAS**, Palm Beach County now recognizes that businesses in the Glades have unique geographic and economic issues that make a countywide local preference ineffective in terms of addressing the needs of businesses located in the Glades; and

**WHEREAS**, Palm Beach County desires to establish a preference for businesses and subcontractors located in the Glades when the goods, services, or construction will be utilized or built within the Glades; and

**WHEREAS**, Palm Beach County now recognizes that on construction for public works projects where subcontractors may represent up to 90% of the work awarded in a contract, that a preference should be applied when local or Glades subcontractors are utilized by local businesses; and

**WHEREAS**, the Board of County Commissioners further believes that such preferences will stimulate the Glades economy, attract new businesses and industry, and create a demand for jobs to provide such goods, services and construction; and

**WHEREAS**, the provisions of this Ordinance shall apply only to funds expended by Palm Beach County to procure goods, services and to construct public improvements, where permitted by law; and

1       **WHEREAS**, the Board of County Commissioners has deemed it necessary to amend the  
2       current Local Preference in Purchasing Ordinance in order to further facilitate and enhance the  
3       efficiency of the County's procurement process.

4       **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**  
5       **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

6       **Section 1. TITLE:**  
7

8       This Ordinance shall be entitled the Palm Beach County Local Preference Ordinance.

9       **Section 2. DEFINITIONS:**  
10

11       **Sec. 2-80.42 of the Palm Beach County Code is hereby amended as follows:**

12       (a)     "Glades" means the area from the Broward County line north along Canal L-36 to  
13       the Loxahatchee National Wildlife Refuge, thence north to Southern Boulevard along Canal L-40,  
14       thence west along Southern Boulevard to a north-south line 1 1/2 miles west of Canal L-8, which  
15       coincides with a private agricultural road heading north from Southern Boulevard at that point  
16       where State Road 880 intersects Southern Boulevard from the South, thence north along the line of  
17       this north-south road to the boundary of the J.W. Corbett Wildlife Management Area, thence east  
18       and north along the boundary of the J.W. Corbett Wildlife Management Area to the Martin County  
19       line.

20       (b)     "Glades business" means a bidder or proposer which has a permanent place of  
21       business within the Glades and which holds a business tax receipt issued by Palm Beach County  
22       that authorizes the bidder or proposer to provide the goods, services, or construction to be built and  
23       which is issued prior to the issuance of the invitation for bids/request for proposals for which a  
24       preference is sought. If the business is a joint venture/partnership, it is sufficient for qualification  
25       as a Glades business if at least one of the joint venturers/partners meets the requirements set forth  
26       in this subsection.

27       (c)     "Glades subcontractor" means a subcontractor participating in a bid or proposal for  
28       goods, services or construction which has a permanent place of business within the Glades and  
29       which holds a business tax receipt issued by Palm Beach County that authorizes the Glades  
30       subcontractor to provide goods, services or construction services and which is issued prior to the  
31       issuance of the invitation for bids/request for proposals for which a preference is sought. If the  
32       subcontractor is a joint venture/partnership, it is sufficient for qualification as a Glades  
33

1 subcontractor if at least one of the joint venturers/partners meets the requirements set forth in this  
2 section.

3 (a) (d) "Local business" means a bidder or proposer which has a permanent place of  
4 business within Palm Beach County and which holds a ~~valid occupational license~~ business tax  
5 receipt issued by Palm Beach County that authorizes the bidder or proposer to provide the goods,  
6 services, or construction to be purchased and which is issued prior to the issuance of the invitation  
7 for bids/request for proposals for which a preference is sought. If the business is a joint  
8 venture/partnership, it is sufficient for qualification as a local business if at least one of the joint  
9 venturers/partners meets the test set forth in this subsection.

10 (e) "Non-local business" means a bidder or proposer which is not a local business or a  
11 regional business as defined herein.

12 (f) "Permanent place of business" means headquarters which are located within Palm  
13 Beach County or within the Glades for Glades businesses, or a permanent office or other site  
14 located within Palm Beach County or within the Glades for Glades businesses, from which a bidder  
15 or proposer will produce a substantial portion of the goods or perform a substantial portion of the  
16 services to be purchased and which was in existence prior to the issuance of the invitation for  
17 bids/request for proposals. A post office box or location at a postal service center shall not  
18 constitute a permanent place of business.

19 (g) "Regional business" means a business which does not have a permanent place of  
20 business within Palm Beach County and which is domiciled within Broward, Martin, or Miami-  
21 Dade County for purposes of receiving a regional business preference from Broward, Martin, or  
22 Miami-Dade County.

23 (h) "Regional business preference" means any policy, program, rule, regulation or  
24 practice of Broward, Martin or Miami-Dade County which grants any business a preference of any  
25 amount or percentage based on its location in that jurisdiction in relation to other bidders or  
26 proposers.

27 All other terms and definitions used herein shall have the same meaning as set forth in the  
28 Purchasing Ordinance, as it may be amended.

29

30

1     **Section 3. RECIPROCAL PREFERENCE FOR LOCAL BUSINESSES:**

2             **Sec. 2-80.43 of the Palm Beach County Code is hereby amended as follows:**

3  
4             In the event the lowest responsive, responsible bidder or the highest ranked responsive,  
5     responsible proposer in the procurement of goods, services or the construction of public works  
6     projects is a regional business, and the regional business is from a jurisdiction which applies a  
7     regional business preference against Palm Beach County businesses, the bids or proposals of all  
8     local businesses may be adjusted by five percent (5%), solely for the purpose of determining bid or  
9     proposal award. The bid price of local ~~bidders~~ businesses will be adjusted downward by five  
10    percent (5%) for purposes of ranking bidders. The proposal scores of local ~~proposers~~ businesses  
11    will be adjusted upward by five percent (5%) for purposes of ranking proposers. In no event,  
12    however, shall the application of this adjustment change the actual bid or proposal amount.

13            The determination as to whether a bidder or proposer is a local or regional business shall be  
14    made by County staff based upon documentation submitted by the local and regional bidder or  
15    proposer at the time of bid or proposal submission and pursuant to this Ordinance and to any rules  
16    and regulations promulgated by the Purchasing Department. County staff may require a bidder or  
17    proposer to provide additional information at any time prior to the award of the contract.

18     **Section 4. STRAIGHT PREFERENCE FOR LOCAL BUSINESSES:**

19  
20            **Sec. 2-80.44 of the Palm Beach County Code is hereby amended as follows:**

21  
22            In the event the lowest responsive, responsible bidder or the highest ranked responsive,  
23    responsible proposer in the procurement of goods, services or the construction of public works  
24    projects is a non-local business, the bids or proposals of all responsive, responsible local businesses  
25    may be adjusted by five percent (5%), solely for the purpose of determining bid award. The bid  
26    price of local ~~bidders~~ businesses will be adjusted downward by five percent (5%) for purposes of  
27    ranking bidders. The proposal score of local ~~proposers~~ businesses will be adjusted upward by five  
28    percent (5%) for purposes of ranking proposers. In no event, however, shall the application of this  
29    adjustment change the actual bid amount.

30            The determination as to whether a bidder or proposer is a local or non-local business shall  
31    be made by County staff based upon documentation submitted by the local and regional bidder or  
32    proposer at the time of bid or proposal submission and pursuant to this Ordinance and to any rules  
33    and regulations promulgated by the Purchasing Department. County staff may require a bidder or  
34    proposer to provide additional information at any time prior to the award of the contract.



1     **Section 5. STRAIGHT PREFERENCE FOR GLADES BUSINESSES:**  
2

3             For any good or service to be utilized in the Glades and for any construction project located  
4 in the Glades, the straight preference described in this Section shall be applied in lieu of the  
5 reciprocal preference described in Section 3 herein and the straight preference described in Section  
6 4. In the event the lowest responsive, responsible bidder or the highest ranked responsive,  
7 responsible proposer in the procurement of goods, services or the construction of public works  
8 projects is a non-Glades business, the bids or proposals of all responsive, responsible Glades  
9 businesses may be adjusted by five percent (5%), solely for the purpose of determining bid award.  
10 The bid price of all responsive, responsible Glades businesses will be adjusted downward by five  
11 percent (5%) for purposes of ranking bidders. The proposal score of all responsive, responsible  
12 Glades businesses will be adjusted upward by five percent (5%) for purposes of ranking proposers.  
13 In no event, however, shall the application of this adjustment change the actual bid amount. A  
14 local business which is not a Glades business, but which utilizes Glades subcontractors may be  
15 eligible for the preference set forth in Section 6 herein.

16             The determination as to whether a bidder or proposer is a Glades or non-Glades business  
17 shall be made by County staff based upon documentation submitted by the bidder or proposer at the  
18 time of bid or proposal submission and pursuant to this Ordinance and to any rules and regulations  
19 promulgated by the Purchasing Department. County staff may require a bidder or proposer to  
20 provide additional information at any time prior to the award of the contract.

21     **Section 6. STRAIGHT PREFERENCE FOR USE OF GLADES SUBCONTRACTORS BY**  
22 **LOCAL BUSINESSES:**

23             For any good or service to be utilized in the Glades or for any construction project located  
24 in the Glades, the straight preference described in this Section shall be applied in lieu of the  
25 reciprocal preference described in Section 3 and the straight preference described in Sections 4 and  
26 5 of this Ordinance, and cannot be combined with a preference received pursuant to Section 6 of  
27 this Ordinance. A bidder or proposer in the procurement of goods, services and construction of  
28 public works projects who is a local business but not a Glades business and who utilizes Glades  
29 subcontractors for a minimum of 15% of the work may receive a straight local preference of three  
30 percent (3%), solely for the purpose of determining bid award. The bid price of local businesses  
31 utilizing Glades subcontractors for a minimum of 15% of the work will be adjusted downward by  
32 three percent (3%) for purposes of ranking bidders. The proposal score of local businesses utilizing

1 Glades subcontractors for a minimum of 15% of the work will be adjusted upward by three percent  
2 (3%) for purposes of ranking proposers. In no event, however, shall the application of this  
3 adjustment change the actual bid amount.

4 A bidder or proposer in the procurement of construction of public works projects who is a  
5 local business and who utilizes Glades subcontractors for a minimum of 30% of the work may  
6 receive a straight local preference of four percent (4%), solely for the purpose of determining bid  
7 award. The bid price of local businesses utilizing Glades subcontractors for a minimum of 30% of  
8 the work will be adjusted downward by four percent (4%) for purposes of ranking bidders. The  
9 proposal score of local businesses utilizing Glades subcontractors for a minimum of 30% of the  
10 work will be adjusted upward by four percent (4%) for purposes of ranking proposers. In no event,  
11 however, shall the application of this adjustment change the actual bid amount.

12 For the purposes of determining Glades subcontractor participation under this Section, the  
13 total of Glades subcontractor participation described below will apply:

14 (1) the local business may count towards its preference only that portion of the total  
15 dollar value of a contract performed by a Glades subcontractor;

16 (2) the local business may count towards its preference the entire expenditures for  
17 materials and equipment purchased by a Glades subcontractor provided that the Glades  
18 subcontractor has the responsibility for the installation of the purchased materials and equipment;

19 (3) the local business may count towards its preference the entire expenditure to a  
20 Glades subcontractor who is a manufacturer (i.e., a supplier that produces goods from raw materials  
21 or substantially alters the goods before resale);

22 (4) the local business may count towards its preference sixty percent (60%) of its  
23 expenditures to Glades subcontractors that supply the material but do not manufacture or  
24 substantially alter the material; and

25 (5) the local business may count towards its preference second and third tiered Glades  
26 subcontractors, provided that the local business identifies the Glades subcontractors as second and  
27 third tier subcontractors in its bid/proposal.

28 The determination as to whether a subcontractor is a Glades subcontractor shall be made by  
29 County staff based upon documentation submitted by the local and regional bidder or proposer at  
30 the time of bid or proposal submission and pursuant to this Ordinance and any rules and regulations  
31 promulgated by the Purchasing Department. County staff may require a bidder or proposer to

1 provide additional information at any time prior to the award of the contract with regard to the  
2 subcontractor's place of business when a preference is being applied.

3 **Section 7. LIMITATIONS:**

4 **Sec. 2-80.47 of the Palm Beach County Code is hereby amended as follows:**

5 (a) The provisions of this Ordinance shall apply only to procurements which are above the  
6 formal bid threshold as set forth in the Palm Beach County Code.

7 (b) The provisions of this Ordinance shall not apply where prohibited by federal, state or  
8 Florida law or where prohibited under the conditions of any grant.

9 (c) The provisions of this Ordinance shall not apply to any purchase exempted from the  
10 provisions of the Palm Beach County Purchasing Ordinance.

11 (d) The provisions of this Ordinance shall in no way limit the right of the Board of County  
12 Commissioners to compare the quality of the goods and/or services proposed for purchase and the  
13 qualifications, character, responsibility and fitness of any person or entity submitting bids or  
14 proposals or to make an award it deems to be in the best interest of the County

15 (e) In procurements where price is the only factor for selection, the provisions of this  
16 Ordinance shall not be applied where its application would result in an award which exceeds the  
17 otherwise lowest responsive, responsible bid by \$100,000.00.

18 (f) The provisions of this Ordinance shall not apply to contracts made under the  
19 Consultant's Competitive Negotiation Act (CCNA), Fla. Stat. §287.055, as may be amended from  
20 time to time.

21 (g) A local business or a Glades business or a local business utilizing Glades  
22 subcontractors receiving a preference under the Palm Beach County Small Business Enterprise  
23 Ordinance for a particular purchase shall not be eligible to receive the preferences established in  
24 this Ordinance for that same purchase. In case of any conflict between the provisions of this  
25 Ordinance and the Small Business Enterprise Ordinance, the Small Business Enterprise Ordinance  
26 shall take precedence.

27 (h) Decisions concerning the application of this Ordinance shall be made by the  
28 Department of Purchasing pursuant to this Ordinance and any rules and regulations promulgated by  
29 the County Administrator or his/her designee and shall be final as to the County provided such  
30 decision may be protested pursuant to the protest process set forth in the Purchasing Ordinance.

1 (i) The provisions of this Ordinance shall not be applied to any procurement where the local  
2 nature of a business has been addressed through the scoring criteria.

3 **Section 8. REPEAL OF LAWS IN CONFLICT:**

4 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby  
5 repealed to the extent of such conflict.

6 **Section 9. SEVERABILITY:**

7 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any  
8 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such  
9 holding shall not affect the remainder of this Ordinance.

10 **Section 10. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

11 The provisions of this Ordinance shall become and be made a part of the Palm Beach  
12 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish such,  
13 and the word "ordinance" may be changed to "section," "article," or other appropriate word.

14 **Section 11. EFFECTIVE DATE:**

15 The provisions of this Ordinance shall become effective upon filing with the Department of  
16 State.

17 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach  
18 County, Florida, on this the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

19 **SHARON R. BOCK, CLERK &**  
20 **COMPTROLLER**

**PALM BEACH COUNTY, FLORIDA, BY ITS**  
**BOARD OF COUNTY COMMISSIONERS**

21  
22  
23  
24 By: \_\_\_\_\_  
25 Deputy Clerk

By: \_\_\_\_\_  
John F. Koons, Chairman

26  
27 **APPROVED AS TO FORM AND**  
28 **LEGAL SUFFICIENCY**

29  
30  
31 By: \_\_\_\_\_  
32 County Attorney

33  
34  
35 **EFFECTIVE DATE: Filed with the Department of State on the \_\_\_\_ day of**  
36 **\_\_\_\_\_, 20\_\_\_\_.**